IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WA.No. 1246 of 2007()

AGAINST THE JUDGEMENT IN OP.25717/2001 Dated 28/11/2006

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APPELLANT/PETITIONER

M/S.SIEMENS LIMITED,
130, PADURANG BUDHAKAR MARG, WORLI, MUMBAI-
400 018, REP.BY P.V.VENUGOPAL,
CHIEF MANAGER- INDIRECT TAXATION.

BY ADV. SRI.JOSE JOSEPH

RESPONDENT/ RESPONDENT

THE INTELLIGENCE OFFICER,
SQUAD NO.1,
COMMERCIAL TAXES,
PALAKKAD.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES SHRI V.V. ASOKAN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1246 OF 2007

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Dated this the 7th June, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Challenging the correctness or otherwise of the orders passed by the learned single Judge by judgment dated 28th November, 2006 in O.P. 25717 of 2001, petitioner has filed this Writ Appeal.

2. In the Original Petition, the petitioner had sought for the following reliefs, viz.:

i) To direct the respondent to refund the sum of Rs. 1,51,176/- realised from ANZ Grindlays Bank, Chennai in enforcement of the bank guarantee furnished by the petitioner

ii) To direct the respondent to serve the order under section 29A(4) of the Kerala General Sales Tax Act .

iii) Restrain the respondent from enforcing the order under section 29A (4) of the Kerala General Sales Tax Act.

3. Learned single Judge by judgment dated 28th November 2006 had disposed of the Original Petition. In that judgment, the learned single Judge has

stated, as under:

> *" Petitioner approached this court aggrieved by the recovery proceedings initiated against him under section 29A of the K.G.S.T. Act. In view of the intervening developments, in case the petitioner has any surviving grievance, the petitioner may pursue the same in appropriate proceedings."*

4. A perusal of the above judgment would definitely indicate that, if for any reason, the petitioner is aggrieved by the orders passed by the Sales Tax authorities under section 29A of the K.G.S.T. Act, he has a right of appeal and that appeal remedy can be pursued , if he so desires.

5. In this Writ appeal, the grievance of the petitioner/appellant is that the order passed by the Sales Tax authorities has not been served on him. First and foremost, before approaching this Court, the petitioner ought to have requested the respondent to serve a copy of the order passed under section 29A(4) of the K.G.S.T. Act. Even without doing so, the petitioner makes the allegation in the Original Petition that the order passed under section 29A(4) has not been served on him.

6. Accepting the submission so made by the learned counsel for the petitioner, we direct the respondent to serve one more set of the order passed under section 29A(4) of the K.G.S.T. Act, within four weeks from today and

permit the appellant to file an appeal, if he so desires, since it will not cause any prejudice to the respondent.

7. While rejecting the Writ Appeal, the respondent is directed to serve one more set of the order passed under section 29A(4) of the K.G.S.T. Act , within four weeks from today. After receipt of the said order, we permit the appellant to file an appeal, if he so desires, within one month thereafter. If such an appeal is filed, as directed above, the appellate authority shall decide the appeal on merits without reference to the period of limitation. All other contentions of both the parties are left open.

8. Shri V.V. Asokan, Special Government Pleader for Taxes is directed to take notice for the respondent and to communicate this order to the respondent.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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